

ATTORNEY DOCKET NO. 21101.0054U3
Application No. 10/584,640

Remarks

Claims 1-82 are pending. Claim 50 has been amended to correct an obvious error.

Restriction Requirement

The Office Action requires restriction to one of the following five groups of claims:

- Group I: Claims 1-49, drawn to a method of decreasing/ inhibiting coagulation or thrombosis;
- Group II: Claims 50-59, drawn to a method of preconditioning heparin or heparin sulfate polyglycan;
- Group III: Claims 60-71, drawn to method of determining an amount of heparin or HSPG on a surface wall shear rate;
- Group IV: Claims 72-73, drawn to a method of determining a wall shear rate; and
- Group V: Claims 74-82, drawn to a variant ATIII.

As required in response to the Restriction Requirement, Applicants provisionally elect

Group I (claims 1-49) with traverse.

37 C.F.R. § 1.475 provides that national stage applications shall relate to one invention or to a group of inventions so linked as to form a single general inventive concept. Such inventions possess unity of invention. The Office Action proposes that the groups of inventions are not so linked as to form a single general inventive concept under PCT Rule 13.1; however the Office Action has not provided a legally sufficient basis for this determination.

The Office Action provides two rationale for asserting that the inventions lack unity of invention. First, the Office Action states the premise that under PCT Rule 13.1, “applicant is entitled to the first product, method of making and using same” and then alleges that “the instant application has alternative methods of use.” However, contrary to the Office Action’s premise, there is no restriction under PCT Rule 13.1 to a single method of use if there is a technical

relationship among those inventions involving one or more of the same or corresponding special technical features. See PCT Rule 13.2. Here, all of the claims are directed to the special technical feature of ATIII variants that preferentially bind heparin and heparin sulfate proteoglycan (HSPG) under specific wall shear rate conditions.

The Office Action therefore attempts to argue that the invention of Group I does not escape the prior art by alleging Church et al. (US Patent NO. 6,207,419) teaches a methods of inhibiting coagulation using ATIII. This is, however, a *non sequitur*, since the Office Action mischaracterizes of the common technical feature. This reference therefore does not destroy the novelty or inventive step of the common technical feature (i.e., variants that preferentially bind heparin and HSPG under specific wall shear rate conditions) and thus does not destroy the single inventive concept. Thus, the Examiner has not met the burden for establishing a lack of unity of invention and the restriction is improper.

Applicants also traverse the restriction requirement as currently set forth for the following reasons. To be valid, a restriction requirement must establish both that (1) the "inventions" are either independent or distinct, and (2) that examination of more than one of the "inventions" would constitute a burden to the Examiner. M.P.E.P. § 803 provides:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions. (*Emphasis added.*)

Applicants note that the restriction requirement does not provide sufficient basis to indicate that examination of more than one of the "inventions" would overly burden the Examiner. Accordingly, for this additional reason, there is no basis for maintaining the restriction requirement.

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Moreover, Applicants respectfully assert that restriction of the claims as set forth by the Examiner would be contrary to promoting efficiency, economy and expediency in the Patent Office and further point out that restriction by the Examiner is discretionary (M.P.E.P. § 803.01). Thus, Applicants respectfully request that all of the claims of this application be examined together. Consequently, reconsideration and modification or withdrawal of the restriction requirement is requested.

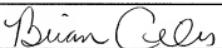
A Credit Card Payment submitted via EFS WEB authorizing payment in the amount of \$245.00, representing the fee for a small entity under 37 C.F.R. § 1.17(a)(2) for a Two Month Extension of Time, and a Request for Extension of Time are hereby enclosed. This amount is believed to be correct; however, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,



P. Brian Giles, Ph.D.
Registration No. 57,896

BALLARD SPAHR ANDREWS & INGERSOLL, LLP
Customer Number 23859
(678) 420-9300
(678) 420-9301 (fax)

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